

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ZURICH AMERICAN INSURANCE COMPANY,

Plaintiff,

– against –

COLONY INSURANCE COMPANY,

Defendant.

ORDER

22-cv-10352 (ER)

Ramos, D.J.:

Zurich American Insurance Company (“Zurich”) seeks to compel third party Synergy Construction Group, Inc.’s (“Synergy’s”) compliance with document and deposition subpoenas. Doc. 25. On January 12, 2024, the Court held a premotion conference in connection with Zurich’s request, at which Synergy did not appear, and Colony Insurance Company (“Colony”) did not take a position as to Zurich’s request. Jan. 12, 2024 Minute Entry. The Court directed Zurich to file a motion to compel and set a briefing schedule for Synergy’s opposition and Zurich’s reply. *Id.*; Doc. 24.

Zurich filed its motion on January 29, 2024, moving to compel compliance with the subpoenas and asking the Court to hold Synergy in contempt and sanction it. Doc. 25. Synergy never filed an opposition. Zurich replied on February 26, 2024, which attached evidence of its service of Synergy and an email chain between Zurich and Synergy’s respective counsels. Doc. 26. That attachment shows that Zurich emailed its motion to compel to Synergy on January 29, 2024. Doc. 26-6 at 7. In response, on February 7, 2024, Synergy offered to allow Zurich to depose Synergy’s agent, but Synergy indicated the same day that it would only schedule the deposition once document production was complete. *Id.* at 5–6. Although Synergy emailed Zurich two PDF documents that it purported to satisfy its discovery obligations under the

document subpoena on February 22, 2024, Zurich responded the next day that those responses were insufficient, as they were only a partial response to one of the ten document requests and were not accompanied by any objections or affidavit detailing the search undertaken and whether any additional responsive documents were found. *Id.* at 2–4. Zurich indicated that it would not withdraw its motion to compel or schedule a deposition until a formal, adequate response was made. *Id.* at 3. Although Synergy indicated on February 26, 2024 that it would sign an affidavit that day stating that the documents it produced were all it had (*id.* at 2), it did not do so (Doc. 26 ¶¶ 15–16). Zurich therefore asks that the Court treat the motion to compel as unopposed. *Id.* ¶ 16.

Thus, despite having knowledge of both the subpoenas and the motion to compel, as evidenced by the emails, Synergy has failed to appear before the Court to respond to the motion to compel. Nor has it properly responded to the subpoenas as required by the Federal Rules of Civil Procedure. Accordingly, the Court GRANTS Zurich’s motion to compel Synergy to comply with the document and deposition subpoenas but DENIES the motion, without prejudice, insofar as it seeks sanctions.

It is SO ORDERED.

Dated: March 11, 2024
New York, New York



Edgardo Ramos, U.S.D.J.